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FOR PUBLIC COMMENT

Low-Level Radioactive Waste Facility Operator Selection Regulations

- **Executive Summary**
- **Draft Regulations (845 CMR 3.00)**

THE COMMONWEALTH OF MASSACHUSETTS
Low-Level Radioactive Waste Management Board
100 Cambridge Street, Room 903
Boston, MA 02202
(617)727-6018
FAX: (617)727-6084

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Executive Summary

Of

845 CMR 3.00 Regulations Governing The Selection Of Operators

Scope

The purpose of the regulations as stated in M.G.L. c.111H is to govern the selection of operators of a low-level radioactive waste (LLW) storage, treatment or disposal facility. The criteria and procedures of the regulations must allow any site community to select the operator and technology or technologies to be utilized at any facility, that best ensure proper facility operation, in order to protect public health, safety and the environment. The regulations must include financial, technical, and management criteria and establish procedures adequate to determine that an operator possesses sufficient reliability, expertise, and competence to operate such a facility.

The draft regulations contain six major sections:

- General Provisions
- Operator Certification
- Selection Procedures
- Development Contract
- Comprehensive Operating Contract
- Exemptions

General Provisions

This section describes the overall objectives of the regulations, which are to permit any site community to select suitable operators and technologies and to establish criteria which will be used in an open and fair process for certifying applicants who would design, construct, and operate a LLW storage, treatment or disposal facility. The section also defines terms related to the governing law, LLW technology, and other terminology used in the regulations.

Operator Certification

In order to be eligible for certification, several criteria are specified which must be met by an applicant to adequately demonstrate that his proposed technology and institutional capabilities are adequate to ensure that the operation, closure, and post closure performance of a facility will properly protect the public health, safety, and the environment. In broad terms, these criteria cover financial, technical, and management issues.

The <u>financial criterion</u> requires a demonstration that the applicant has or can obtain sufficient financial resources to satisfactorily construct, operate, maintain, provide closure and

post-closure support, and assure financial responsibility to mitigate facility malfunctions or accidents, if they were to occur. Various factors and acceptance criteria which demonstrate the financial viability of the applicant are specified. These include information and standards on liabilities, net worth, bond ratings, assets, and various financial ratios which indicate the applicants' financial health and stability.

Technical criteria generally involve suitability of the applicant's proposed technologies with respect to operating and licensing standards of the Massachusetts Department of Public Health, ability to allow retrieval and monitoring, ability to accommodate mixed waste consistent with Massachusetts Department of Environmental Protection regulations, reasonable cost, and capability of proposed staff. In evaluating an applicant's technical suitability, the Massachusetts Low-Level Radioactive Waste Management Board will consider several factors, including:

- background, experience, and educational qualifications of the applicant's principals and proposed staff;

- preliminary facility life-cycle plans including description and design features of technologies to be used; assumed site characteristics necessary for the successful application and performance of the proposed technologies; relationship of principal design features to performance objectives; principal construction methods and materials to be used; preliminary operating plans; closure and post closure plans; and quality assurance and quality control plans.

Various U.S. Nuclear Regulatory Commission reports and documents may be used by the Management Board in evaluating whether the applicant satisfies technical criteria.

A number of management criteria must be met for an applicant to be eligible for certification, including, a good record with regard to legal or regulatory violations, criminal convictions, and compliance with any orders, consent decrees, or similar administrative judgments; satisfactory past management practices; appropriate training and experience of the proposed project manager; competence in managing the required work; successful and relevant past experience; commitment of resources; understanding the needs of public participation; and no prior site selection work for the Board.

Various standards and measures are outlined for the Board to use in evaluating whether the applicant satisfies these criteria.

Selection Procedures

The selection procedures outlined by the regulation include

requirements for public disclosure of material submitted relevant to the operator selection process; criteria for developing, issuing, and submitting a "request for proposals;" a requirement for the Massachusetts Attorney General to submit an investigative report on each applicant to the Community Supervisory Committee (CSC); requirements for the applicant to submit annual expenditure reports; requirements and procedures for the Management Board to issue an applicant certification; requirements and procedures for an adjudicatory proceeding; requirements for certified applicants to participate in an Advisory Board to assist in the planning and implementation of site characterization; requirements for certified applicant statements of interest, interviews; discussions, and written responses to CSC questions; and a procedure for CSC selection of the facility operator. In the event that the CSC fails to select an operator from among the certified applicants, the Board shall select such operator by a vote of its members.

Development Contract

Within 60 days of the selection of the operator by the CSC, the Management Board is required to execute a contract for development of the facility at the superior site. Terms of the contract will be negotiated and the operator will be required to post a performance bond in an amount to be set by the Board. Provisions are also specified to enlist the advice and assistance of the Division of Capital Planning and Operations to oversee and evaluate the operators's activities under the contract.

Comprehensive Operating Contract

The regulation specifies a procedure by which the Management Board and the Superior Site CSC will negotiate a comprehensive operating contract with the operator. Minimum contract requirements are outlined by the regulation. Included are requirements that specify the amounts and schedule of compensation and impact payments to site, neighboring and affected communities; annual payment of property taxes to the site community; a distribution of the municipalities percentage of the gross operating recipts of the facility; and provisions that the operator collect a surcharge for the Low-Level Radioactive Waste Trust Fund.

Exemptions

The regulation exempts the operator from the requirements of M.G.L. c.149, sections 44A through 44J and M.G.L. c.7, sections 38A1/2 through 38N, as specified in M.G.L. c.111H. These laws provide procedures for bidding and awarding contracts for construction of other public works projects and selection procedures for design services for other public buildings, respectively.

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845 CMR 3.00 REGULATIONS GOVERNING THE SELECTION OF OPERATORS

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GENERAL PROVISIONS

3.01: Overall Objectives

The purpose of these regulations is to implement sections of the Massachusetts Low-Level Radioactive Waste Management Act, *M.G.L.* c.111H, governing the criteria and procedures for selection of an operator for any facility at a superior site, so as to:

(1) permit any site community to select the operator and technology or technologies that best ensure proper facility operation in order to protect public health, safety and the environment

(2) establish criteria for certifying Applicants to design, construct, and operate a low-level radioactive waste management facility

(3) ensure an open and fair process for certifying such Applicants.

3.02: Definitions

For the purpose of 845 CMR 3.00, the following definitions shall apply unless the context or subject matter requires a different interpretation:

"Accident," any event arising from the storage, treatment, recycling or disposal of waste that causes a discharge or dispersal of waste or elements contained in the waste from its intended place of confinement.

"Administrative judgment," any administrative order, notice of violation, permit revocation, permit suspension or penalty or fine, whether civil or criminal, rendered against, or imposed by consent order, judgment or decree on an Applicant, affiliated entity, principal, or key personnel by any agency of the Commonwealth or by that of any other state or by that of the federal government.

"Affected Community," a community, other than a site community, which is identified in an environmental impact report prepared pursuant to *M.G.L.* c.111H, §30, and can be expected to experience significant impacts as a result of the location, development, operation, closure, post-closure observation and maintenance or institutional control of a facility.

"Affiliated Entity," any public or private corporation or authority, firm, joint stock company, partnership, association, trust, estate, institution or other entity, which has common ownership or control with the Applicant.

"Applicant," any person who responds to a request for proposals pursuant to 845 CMR 3.22.

"Board," the Low-Level Radioactive Waste Management Board established in *M.G.L.* c.111H, §2 which is responsible for planning and effecting the management of low-level radioactive waste in the Commonwealth.

"Broker," a person engaged in the business of arranging for the collection, transportation, treatment, storage or disposal of low-level radioactive waste.

"Candidate site," a site, identified in accordance with the procedures established in *M.G.L.* c.111H, §20, which will be the subject of detailed site characterization as part of the process to select any superior site.

"Closure," the permanent termination of low-level radioactive waste acceptance at a facility, including closure prior to the scheduled closing date, and the implementation of a closure plan.

"Closure plan," the plan, required as a condition of a facility license, prepared pursuant to regulations adopted under *M.G.L.* c.111H, §16, to assure safe facility closure after operation.

"Community," a city or town of the Commonwealth.

"Community compensation," any money, thing of value or economic benefit conferred by an operator or the Board on any site or neighboring community under the terms and conditions specified in a comprehensive operating contract executed pursuant to *M.G.L.* c.111H, §33.

"Community supervisory committee," a committee, established pursuant to *M.G.L.* c.111H, §21, to facilitate the participation of a community, in which a candidate site is located, in the activities established by this chapter.

"Comprehensive operating contract," a contract entered into by an operator and the Board pursuant to *M.G.L.* c.111H, §33 which specifies the community compensation to be provided by the operator or the Board.

"Continuing violation," a violation of a statute, bylaw, ordinance or regulation that is not being abated or removed after notice from the relevant enforcing authority has been given to the person who committed such violation or a violation where the violator is not cooperating in good faith with the appropriate federal, state or local agency to remedy or abate the violation.

"Days," calendar days; provided that in computing time periods such periods shall exclude the day of the event which starts the period running, and further provided that if the last day of a period falls on a Sunday, legal holiday or declared state of emergency day, such period shall be extended to the close of business on the next business day.

"Detailed site characterization," the on-site investigatory and analytical step of site selection established in *M.G.L.* c.111H, §23 and conducted prior to the selection of any superior site.

"Development," all activities undertaken with respect to a low-level radioactive waste facility during the period commencing with the selection of any superior site pursuant to *M.G.L.* c.111H, §23 and continuing until the commencement of facility operation pursuant to *M.G.L.* c.111H, §39.

"Development contract," a contract entered into by an operator and the Board pursuant to *M.G.L.* c.111H, §28 under which such operator shall be obligated to fulfill all of the requirements of the facility approval process established pursuant to *M.G.L.* c.111H, §§29 - 34, inclusive.

"Disposal," the isolation of low-level radioactive waste from the biosphere inhabited by human beings and their food chains.

"Facility," a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which, pursuant to this chapter, is being developed, is used, or has been used for the treatment, storage or disposal of low-level radioactive waste. A "facility" does not include any property used for temporary storage of low-level radioactive waste in sealed containers by a broker.

"Facility license," a license to operate a facility issued by the Department of Public Health pursuant to *M.G.L.* c.111H, §31 or by the U.S. Nuclear Regulatory Commission.

"Half-life," the time in which half the atoms of a particular radioactive substance disintegrate to another nuclear form.

"Institutional control," the continued observation, monitoring, and care of a facility following transfer of the facility license from the operator to the Board.

"Key personnel," any individual who makes or can be expected to make management decisions for an Applicant, related to obligations contracted for pursuant to these regulations .

"Low-level radioactive waste," radioactive material that (1) is neither high-level waste, nor spent nuclear fuel, not by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2014(e); and (2) is classified by the Federal Government as low-level radioactive waste, but not including waste which remains a Federal responsibility, as designated in §3(b) of the Low-Level Radioactive Waste Policy Act, as amended, 42 U.S.C. §2021c(b), as in effect as of December 8,1987.

"Low-Level Radioactive Waste Trust Fund," a trust fund established pursuant to *M.G.L.* c.10, §35H which shall consist of surcharges collected from users of the low-level radioactive waste facility in an amount determined by the board on an annual basis, which shall be used to meet the obligations set forth in *M.G.L.* c.111H, §§9 and 47.

"Major violation," a violation of a statute, bylaw, ordinance or regulation which, in the board's judgment, either has resulted in, or reasonably might have resulted in, serious personal injury, disease or death to any person or in major environmental impact; except that a major violation shall not include a violation arising principally out of the act of a third party, not under the control of the person found to have committed the violation.

"Management," the storage, packaging, treatment, transportation, or disposal, where applicable, of low-level radioactive waste.

"Management plan," the low-level radioactive waste management plan adopted by the board pursuant to *M.G.L.* c.111H, §12 to provide for the safe and efficient management of low-level radioactive waste.

"Mixed waste," low-level radioactive waste containing material that either

(a) is listed in 310 CMR 30.131 through 30.136; or
(b) causes the waste to exhibit any of the characteristics identified in 310 CMR 30.120.

"Neighboring community," a community, other than a site community, which, according to the most recent decennial census conducted pursuant to *M.G.L.* c.9, §7, has at least twenty per cent (20%) of its population residing within three miles of any superior site.

"Operation," the control, supervision or implementation of the actual physical activities involved in the acceptance, storage, treatment, disposal or monitoring of low-level radioactive waste at a facility and the maintenance of the facility and any other responsibilities of the operation pertaining to the facility.

"Operator," a person designated in accordance with the procedures established in *M.G.L.* c.111H, §§22 and 27 to develop and operate a low-level radioactive waste facility.

"Pattern of Major Violations," the issuance, within the past five years, of two or more final court judgments, decrees or settlement agreements or administrative judgments, of which judicial review has not been sought, which: (a) arose out of

separate instances of personal injury, disease, death or environmental impact; (b) in the judgment of the Board, involve substantially similar factual allegations, defenses or mitigation claims; and (c) contain a finding that the Applicant, its affiliated entities, principal or key personnel has committed a major violation.

"Person," any agency or political subdivision of the Federal Government or the Commonwealth, or of any state, any public or private corporation or authority, individual, firm, joint stock company, partnership, association, trust, estate, institution or other entity, and any officer, employee or agent of such person, and any group of such persons.

"Post-closure observation and maintenance," the active monitoring and maintenance of a facility which has been closed in preparation for transfer of the facility's license from the operator to the Board.

"Principal," any person having a 10% or more of the total financial interest in an Applicant's facility proposal.

"Professional training," the level of academic or on-the-job training generally recognized as adequate to qualify a person to be employed in a discipline.

"Site community," the community in which is located all or any part of any superior site.

"Source minimization," minimizing the volume of radioactivity of low-level radioactive waste prior to its generation by such methods as: (1) avoiding unnecessary contamination of items during the use of radioactive materials; (2) carefully segregating radioactive waste from non-radioactive trash; or (3) substituting non-radioactive isotopes or radioisotopes with shorter half-lives where practicable.

"Storage," the holding of low-level radioactive waste for treatment or disposal.

"Storage for decay," a procedure in which low-level radioactive waste with a relatively short half-life is held for natural radioactive decay in compliance with applicable federal and state regulations.

"Superior site," any selected by the Board, after detailed site characterization, pursuant to *M.G.L.* c.111H, §23.

"Treatment," any method, technique, or process, including source minimization, volume minimization and storage for decay, designed to change the physical, radioactive, chemical or biological characteristics or composition of low-level radioactive waste in order to render such waste safer for management, amenable for recovery, convertible to another usable material or reduced in volume.

"Violation," any act or failure to act which constitutes or results in one or more of the following:

(a) engaging in any business or other activity without a license or approval whenever engaging in such business or activity requires such license or approval.

(b) engaging in any activity prohibited by, or not in compliance with, any statute, by-law, ordinance or regulation.

(c) not fully doing, or not doing in timely fashion, anything required by any statute, by-law, ordinance or regulation.

"Volume minimization," treatment of low-level radioactive waste after its generation in order to minimize the physical dimensions of the waste and the space required for disposal.

OPERATOR CERTIFICATION

3.11: Criteria for Operator Certification

In order to be eligible for certification, pursuant to *M.G.L.* c.111H, §22, an Applicant shall propose a technology and demonstrate, to the Board's satisfaction, sufficient reliability and expertise to design, construct, operate, close, and conduct post-closure observation and maintenance of a facility utilizing such technology in a manner that will protect public health, safety, and the environment. For each technology proposed, such demonstration shall address the financial criteria, technical criteria and management criteria set forth in _____CMR 3.11 through 3.13 inclusive.

3.12: Financial Criteria for Operator Certification

(1) In order to be eligible for certification, pursuant to *M.G.L.* c.111H, §22, the Applicant:
   (a) shall demonstrate, to the Board's satisfaction that it has sufficient financial resources or is capable of obtaining sufficient financing to:
      1) construct a facility with the characteristics set forth in the Applicant's proposal, in accordance with a development contract executed pursuant to *M.G.L.* c.111H, §28; and
      2) operate and maintain such a facility in compliance with all applicable statutes and regulations, and the comprehensive operating contract; and
      3) provide assurance of financial responsibility in the event of accidents or malfunctioning at the facility, and provide for closure and post-closure observation and maintenance of the facility; and
   (b) shall have:
      1) For each of the past five years, at least two of the following three ratios:
         a) a ratio of total liabilities to net worth less than 2.0; or
         b) a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; or
         c) a ratio of current assets to current liabilities greater than 1.5; and
      2) A current rating for its most recent bond issuance (if any) of AAA, AA or A as issued by Standard and Poor or Aaa, Aa, or A as issued by Moody; and
      3) Net working capital and tangible net worth each at least six times the sum of the closure and post-closure costs estimates contained in the proposal; and
      4) Tangible net worth of at least $10 million; and
      5) Assets in the United States amounting to at least six times the sum of the closure and post-closure estimates contained in the proposal; and
   (c) shall demonstrate, to the Board's satisfaction, that it satisfies or capable of satisfying, the financial requirements of 30 CMR 30.900.

(2) When evaluating whether an Applicant satisfies the financial criteria of this section, the Board shall consider:
   (a) The Applicant's current assets and liabilities; and
   (b) The Applicant's short-term and long-term debt; and
   (c) The Applicant's credit rating; and

(d) Any Form 10Ks and Form 10Qs that the Applicant has filed with the U.S. Securities and Exchange Commission, during the last five years; and
(e) If the Applicant did not file Form 10Ks and Form 10Qs with the U.S. Securities and Exchange Commission during one or more of the past five years, audited financial statements prepared by a nationally recognized auditing firm for the past five fiscal years and quarterly financial reports for the past five years; and
(f) Court decisions, decrees or agreements or administrative judgments that have been issued or pending proceedings, which could adversely affect the financial well-being of the Applicant; and
(g) Whether the Applicant, affiliated entities, or principals have ever initiated bankruptcy proceedings, either voluntary or involuntary, as well as the time and performance of the Applicant, affiliated entities or principals since the proceedings; and
(h) Any additional information provided by the Applicant or otherwise available to the Board.

(3) When determining whether an Applicant satisfies the financial criteria of this section, the Board shall apply the most current accounting standards of the Financial Accounting Standard Board of the American Institute of Certified Public Accountants, and may utilize as guidance the most recent revision of the U.S. Nuclear Regulatory Commission's Safety Analysis Report, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility" (NUREG-1199).

3.13: Technical Criteria for Operator Certification:

(1) In order for the Applicant to be eligible for certification, pursuant to *M.G.L.* c.111H, §22, it must be determined, to the Board's satisfaction, that:
(a) The Applicant's proposed facility technology appears to be capable of satisfying the licensing and operation standards of ___ CMR ___; and
(b) The Applicant's proposed technology permits any waste to be accepted at the facility to be monitored and retrieved at any time during the facility's operation, closure, post-closure observation and maintenance or institutional control; and
(c) The Applicant's proposed technology ensures that any mixed waste to be accepted at the facility is managed so as to provide an equivalent level of environmental protection as that required by 30 CMR 30.000; and
(d) The Applicant's proposed technology does not constitute shallow land burial; and
(e) The cost of the Applicant's proposed technology is reasonable in light of the public benefit to be derived from its utilization; and
(f) The Applicant's principals, key personnel and professional staff possess the requisite technical strength, professional training and relevant experience to satisfy the obligations contracted for pursuant to these regulations; and
(g) The Applicant comprehends the applicable laws and regulations, the scope of the work as required by the Request for Proposal, and the resources required to perform the work as required by the Request for Proposals.

(2) When evaluating whether an Applicant satisfied the technical criteria of this section, the Board shall consider:
(a) The background, experience and educational qualifications of all principals of the Applicant, key personnel to be utilized in the performance of any contract with the Board, and the Applicant's technical staff that will be assigned responsibility for facility construction, operation and maintenance; and
(b) Preliminary facility development, operation, closure, post-closure observation and maintenance and institutional control plans, including:
1) A description of the proposed technology or technologies to be utilized; and

2) Any assumed site characteristics necessary for the satisfaction of the licensing and operation standards of _____CMR _____ or the successful utilization of the proposed technology or technologies, including:
   a) Geography and demography; and
   b) Meteorology and climatology; and
   c) Geology and seismology; and
   d) Ground and surface water hydrology; and
   e) Geothermal characteristics; and
   f) Geochemical characteristics; and
   g) Geological, water and other natural resources; and
   h) Biotic features; and
3) The principal design features of the proposed facility, including in particular, for normal and abnormal or accident conditions, those design features related to:
   a) Prevention or minimization of infiltration by water, plants, and animals;
   b) Water management features for water that may enter any disposal units or other waste management areas;
   c) Integrity and stability of engineering barriers;
   d) Stability of intrude barriers surrounding wastes;
   e) Monitoring;
   f) Retrievability;
   g) Occupational exposures;
   h) Facility closures;
   i) Minimization to the extent practicable of long term active maintenance;
   j) Protection from inadvertent intrusion; and
   k) The necessary size of the buffer zone for monitoring and potential remedial measures; and
4) The relationship of principal design features of the proposed facility to the performance objectives set forth in ___CMR ___; and
5) The principal construction methods proposed to be utilized, including a preliminary description of construction materials proposed to be utilized; the Applicant's construction techniques and quality control procedures and any codes and standards which the Applicant has applied to the design and which will apply to construction of the facility; and
6) The Applicant's preliminary operation plans including, in particular, principal plan features relating to:
   a) Receipt and inspection of waste; and
   b) Waste handling and waste storage; and
   c) Waste disposal operations; and
   d) Environmental monitoring and surveillance; and
7) The Applicant's Closure and Post-Closure Plans including the estimated costs of implementation of such plans and, in particular, principal plan features relating to:
   a) Site stabilization; and
   b) Facility decontamination; and
   c) Post-closure environmental monitoring and surveillance; and
8) The Applicant's quality assurance and quality control plans; and

(c) Any additional information provided by the Applicant or otherwise available to the Board.

(3) When determining whether an Applicant satisfies the technical criteria of this section, the Board may utilize as guidance the most recent relevant available U.S. Nuclear Regulatory Commission (NRC) documents, staff and contractor reports and NRC-sponsored conference proceedings.

3.14: Management Criteria for Operator Certification

(1) In order for the Applicant to be eligible for certification, pursuant to M.G.L. c.111, §22, it must be demonstrated to the Board's satisfaction that:
   (a) The Applicant, affiliated entities, principals, and key personnel do not have a pattern of major violations of the public health, safety or environmental requirements of federal, state or local law; and
   (b) The Applicant, affiliated entities, principals, and key personnel do not have a record of continuing violations of the public, health or environmental requirements or federal, state or local law; and
   (c) The Applicant, affiliated entities, principals, and key personnel have complied or are complying with all orders, consent decrees or similar administrative judgments of any federal, state or local agency; and
   (d) The Applicant, affiliated entities, principals, and key personnel have made or are making full payment of any civil or criminal penalties imposed as part of a final judgment under federal, state or local law; and
   (e) The Applicant, affiliated entities, principals, and key personnel have not been convicted of a criminal violation of federal, state or local public health, safety or environmental law, within ten years prior to the date of the application; and
   (f) A review of the past management practices of the Applicant, affiliated entities, principals, and key personnel indicates that it can be reasonably expected that, in constructing, maintaining and operating the proposed facility, the Applicant will maintain a satisfactory record of compliance with applicable statutes, regulations, permits, licenses, the development contract and the comprehensive operating contract; and
   (g) The Applicant has demonstrated the appropriate professional training, qualifications and relevant experience of any person identified as the full-time project or program manager, and the ability of that person to control performance of all responsible components of the proposed organization; and
   (h) The Applicant has demonstrated creativity and competence in organizing and scheduling the required work, including ample public participation, for timely completion; and
   (i) The Applicant, affiliated entities, principals, and key personnel have demonstrated a successful record of relevant, recent experience similar to that required for the development, operation and closure of the proposed facility; and
   (j) The Applicant has demonstrated the ability to commit the required resources immediately upon execution of the development contract; and
   (k) The Applicant, affiliated entities, principals, and key personnel have not previously provided services to the Board in connection with the selection of a superior site for the proposed facility; and
   (l) The Applicant and key personnel have demonstrated understanding of the needs of public participation complying with *M.G.L.* c.111H as demonstrated in their technical and management approach.

(2) When evaluating whether an Applicant satisfies the management criteria of this section, the Board shall consider:
   (a) For the Applicant, affiliated entities, principals, or key personnel, a history of their compliance with federal, state and local requirements, including the circumstances giving rise to any violation, all fines or penalties imposed, including those imposed by consent, order, judgment or decree, and the corrective actions taken to remedy or abate the violation; and
   (b) To the extent practicable, any pending investigations, hearings, litigation, arbitration or adjudicatory proceedings involving the Applicant, affiliated entities,

principals, or key personnel and concerning compliance with public health, safety or environmental requirements of federal, state or local law; and

(c) Any accidents which have occurred on any property owned or operated by the Applicant or affiliated entities or which has involved the Applicant, affiliated entities or any of their employees; and

(d) The Applicant's and affiliated entities' record, if any, of compliance with safety laws and regulations in the operation of any fleet of vehicles owned by the Applicant or affiliated entity, and any personal injury, property damage or environmental impact alleged to have resulted from the Applicant's or affiliated entity's violation of such laws or regulations; and

(e) The existence and extent of a management policy, adopted by the Applicant prohibiting employment discrimination against an employee for reporting or cooperating in the investigation of suspected regulatory violations of the Applicant.

(f) The success of any project, involving relevant, recent experience similar to that required for the development, operation, closure and post-closure observation and maintenance of the proposed facility, including:

1) General information about the project, including its location capacity, and actual performance, the type of storage, treatment or disposal method used; the Applicant's role in the project (i.e., design, construction, operation); project initiation and completion dates; current project status and, if closed, the reason for closure; the Applicant's client; and the business address and phone of the current project manager; and
2) The complexity and scope of the project, such as, but not limited to, the project's budget, duration, staffing and regulatory complexity; and
3) Whether the Applicant met the objectives of the project in a timely manner, without exceeding anticipated costs and in compliance with applicable legal requirements; and
4) Whether the Applicant has implemented a quality assurance program for the project and the rigor and results of such a program, if any; and
5) Whether the client was satisfied with the Applicant's performance; and
6) Whether the Applicant has ever initiated or defended litigation or administrative proceedings arising from the project, as well as the nature and outcome of such litigation or administrative proceedings; and
7) The results of a physical inspection of the project by the Board or its agent; and

(g) Whether the Applicant or affiliated entities have ever forfeited a performance bond or was ever determined by a final judgment in a court proceeding to have breached major contract responsibilities.

(h) Any additional information provided by the Applicant or otherwise available to the Board.

SELECTION PROCEDURES

3.21: Public Records Disclosure

All material submitted by the Applicant to the Board or the Community Supervisory Committee pursuant to these regulations shall be deemed a public record, and available for scrutiny by any member of the public.

3.22: Request for Proposals

(1) Within 60 days of a vote, pursuant to *M.G.L.* c.111H, §17, to initiate site selection, and after consultation with the Commissioner of the Division of Capital Planning and

Operations, the Board shall issue a Request for Proposals satisfying the requirements of these regulations and conforming to this section.

(2) Each Request for Proposals issued pursuant to this section shall contain the most recent management plan adopted by the Board and shall require each Applicant to submit:
   (a) Detailed organizational information for the Applicant and its proposed Subcontractors, including their legal structure and ownership and control and, in particular, the location of the safety personnel within the organization; and
   (b) Any and all information relevant to the Board's application of the financial, technical and management criteria set forth in 845 CMR 3.11 through 3.13 inclusive, including but not limited to:
      1) Any Form 10Ks and Form 10Qs that the Applicant has filed with the U.S. Securities and Exchange Commission, during the last five years; and
      2) If Applicant did not file Form 10Ks and Form 10Qs with the U.S. Securities and Exchange Commission during one or more of the past five years, audited financial statements prepared by a nationally recognized auditing firm for the past five fiscal years and quarterly financial reports for the past five years; and
      3) Any material pending legal proceedings, other than routine litigation incidental to the ordinary course of business, to which the Applicant or any of its affiliated entities, principals, or key personnel is a party or which any of their property is the subject. The Applicant shall include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. The Applicant shall also include similar information as to any such proceedings known to be contemplated by government authorities; and
   (c) Proposed site community, neighboring community and affected community compensation benefits and guarantees;
   (d) Terms under which the Applicant will participate in an advisory board that will assist in the planning and implementation of detailed site characterization; and

(3) Each Request for Proposals issued pursuant to this section shall include a statement of procedures to be followed in responding to the request for proposals, specifying that:
   (a) Applicants shall be required to respond to the request for proposals within 120 days of the issuance date specified in the Board vote to issue the Request for Proposal; and
   (b) Applicants shall be required to pay the Board a fee, determined by the Board, of not less than $10,000 at the time it submits its response to the request for proposals; and
   (c) Applicants shall be required to agree that there shall be no substitution for the key personnel to be utilized in the performance of any contact with the Board, identified in the Proposal, except with persons of equal or greater background, experience and educational qualifications and that such substitutions shall require the prior approval of the Board; and
   (d) Applicants shall be required to submit, promptly upon their completion, updated Form 10Ks and Form 10Qs as filed with the U.S. Securities and Exchange Commission, or updated annual audited financial statements proposed by a nationally recognized auditing firm and updated quarterly financial reports, for each period prior to the selection of the facility operator permit pursuant to M.G.L. c.111H, §27; and
   (e) Applicants shall be required to submit the following certification:

"I certify under the pains and penalties of perjury that I have personally examined and am familiar with the information submitted in this form and with those of the attached documents prepared by or under the direction of the Applicant, and that the information contained in this form and in those of the attached documents prepared by or under the direction of the Applicant is true, accurate and complete."

which shall be signed:

1) if the Applicant is a corporation, by a principal executive officer of at least the level or vice president; or
2) if the Applicant is a partnership, by a general partner; or
3) if the Applicant is a sole proprietor, by the proprietor.

(4) The Board may request of the Applicant any additional information it deems necessary to determine whether the Applicant satisfies the financial, technical and management criteria set forth in 845 CMR 3.11 through 3.13 inclusive. The Applicant shall promptly report any significant change in circumstances that may be deemed relevant to its certification pursuant to these regulations.

3.23: Attorney General's Investigative Reports

Within 60 days of the final date for submission of responses to the request for proposals, pursuant to 845 CMR 3.22, the Attorney General shall prepare and submit to the Board and Community Supervisory Committees a report on each Applicant and its officers, directors, partners, principal owners, key personnel and proposed subcontractors, describing their record of compliance with environmental and related laws, regulations, permits and licenses.

3.24: Applicant Expenditure Reports

(1) Each Applicant shall annually, by March first, submit to the Board, the State Ethics Commission and the Inspector General, a report listing each expenditure made during the previous calendar year by an official, employee or representative of the firm, including consultants, to or for the benefit of the Board, the Department of Public Health, the Department of Environmental Protection, the Division of Capital Planning and Operations or any Community Supervisory Committee, or any member of employee thereof. An officer of the firm shall certify the report as complete and accurate under pains and penalties of perjury.

(2) For the purposes of this section, an expenditure shall include, but not be limited to, any payment, entertainment, subscription, advance, discount, service or anything of value unless consideration of equal or greater fair market value is given in exchange for it. An expenditure shall not include an unsolicited gift of advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value, not to exceed $25.00. An expenditure shall not include a meal or a token if:

(a) The meal or token is given in connection with a person's performance of official duties at a business meeting of an organization, or an educational, informational or professional development function, or similar kind of event; and
(b) The value of the meal or token is less than $50.00. However, as used in this section, a token shall not include cash, or a free pass, a discount or ticket to a sporting event or entertainment.

(3) Suspected violations of this reporting requirement shall be referred to the State Ethics Commission.

(4) No Applicant who fails to be certified pursuant to the provisions of 845 CMR 3.25 shall be required to submit a report in accordance with this section for any year after the year during which the certification of Applicants is made.

(5) No certified Applicant who fails to be selected as an operator pursuant to the provisions of 845 CMR 3.29 shall be required to submit a report in accordance with this section for any year after the year during which the operator is selected.

3.25: Applicant Certification

(1) Upon the issuance of the draft candidate site identification report pursuant to *M.G.L.* c.111H, §20 and after consultation with the deputy commissioner of Division of Capital Planning and Operations, the Board shall certify those Applicants who satisfy the financial, technical and management criteria set forth in 845 CMR 3.11-3.13. If an Applicant has proposed more than one technology for the facility, the Board shall separately determine for each technology proposed, whether the Applicant is to be certified. Such certification shall be accompanied by a report including a statement of reasons for the certifications made. Such report shall be distributed to each Community Supervisory Committee, the Applicants and all others making a timely request.

(2) Reconsideration of a Negative Determination
(a) Within 10 days after a determination by the Board that an Applicant is not certified pursuant to this section with respect to one or more technologies proposed by the Applicant, the Applicant may file with the Board a written request for reconsideration setting forth, with particularity, the basis of the requested reconsideration and requesting an adjudicatory proceeding thereon, as allowed by 845 CMR 3.25(4).
(b) The Applicant shall mail, on the same day that the request for reconsideration is filed, a copy of said request, via certified mail, to each Community Supervisory Committee.

(3) Revocation of Certification
(a) The Board shall revoke an Applicant's certificate if one or more of the following is established to the Board's satisfaction:
1) The Applicant knowingly submitted false information in its proposal or knowingly misrepresented or omitted information contained or required in the proposal or required by these regulations; or
2) The Applicant submitted false information in its proposals or misrepresented or omitted information contained or required in the proposal required by these regulations, and the Board, upon considering all the information in its possession, finds that the Applicant does not satisfy the criteria set forth in 845 CMR 3.10 through 3.13 inclusive.
3) Information is received concerning events, conditions or occurrences which would have been relevant to the initial certification by the Board but which occurred subsequent to that certification and the Board, upon considering all the information in its possession, finds that the Applicant does not satisfy the criteria set forth in 845 CMR 3.10 through 3.13 inclusive.
(b) Procedure.
1) Any written report of information which might result in the Board's considering revocation and which is received by the Board staff, or any member of the Board shall be submitted to the Executive Director, who shall inform the Board of its existence no later than its next regular meeting. The

Board shall not be required to take any action with respect such information at that meeting.

2) The Executive Director shall review such information, and may request additional information from any source which may serve to establish the accuracy and potential impact of such information. Upon completion of said review, the Executive Director shall submit to the Board a recommendation as to whether the Board should consider revocation of the Applicant's certificate. The Executive Director shall recommend that the Board consider revocation if the Executive Director finds that:
   a) The information which has been received raised questions about the Applicant's certification which are serious enough to warrant consideration by the Board, and
   b) The source of the information appears to be reliable.
3) If the Board decides that it should consider revocation, notice of such decision shall be sent to the Applicant, all Community Supervisory Committees and the person who originally submitted the information. The notice shall include a brief summary of the issues to be addressed by the Board in considering revocation, and the date, time and place of the meeting at which the Board shall discuss and vote on revocation.
4) At its next regular monthly meeting following the meeting at which the Board decided to consider revocation, the Board shall decide whether to revoke the Applicant's certification.
5) In the event that the Board decides to revoke the Applicant's certification, the Applicant may request an adjudicatory hearing thereon.

(4) Adjudicatory Proceeding.

(a) Any adjudicatory proceeding conducted pursuant to this section shall be conducted by a presiding officer appointed by the Board, and shall be open to the public. Except as otherwise required by this subsection, the adjudicatory proceeding shall be conducted in accordance with the standard Adjudicatory Rules of Practice and Procedure, Formal Rules, 801 CMR 1.01.

(b) In addition to the requirements of 801 CMR 1.01(6)(a), any Applicant requesting an adjudicatory hearing shall send notice thereof by certified mail, return receipt requested, to the Community Supervisory Committees and to whomever else the Board specifies in writing.

(c) Within 30 days of adjournment of the adjudicatory hearing, the presiding officer shall render a tentative decision pursuant to 801 CMR 1.01(10)(n)(1). The presiding officer shall send copies thereof to the parties to the proceeding, and the Community Supervisory Committees.

(d) Within 45 days of the close of the period for filing objections to the tentative decision, as specified in 801 CMR 1.01(10)(n)(1), the Board shall render its final decision pursuant to 801 CMR 1.01(10)(n)(2).

3.26: Applicant Advisory Board

(1) Within 90 days of the issuance of the draft candidate site identification report, the Board shall execute a contract with each certified Applicant under which the Applicant shall participate in an Advisory Board.

(2) The Advisory Board will assist in the planning and implementation of detailed site characterization of the candidate sites identified pursuant to *M.G.L.* c.111H, § 20, in accordance with the regulations adopted by DEP.

3.27: Certified Applicant Interviews and Discussions

(1) No more than 11 months after the acceptance of the candidate site identification report (during which site characterization will occur), each Certified Applicant must file a statement with the Board and each Community Supervisory Committee indicating that it is willing to develop and operate a facility at every candidate site, or identifying any candidate site at which it is unwilling to develop and operate a facility.

(2) Between 11 and 14 months after the acceptance of the candidate site identification report, each Community Supervisory Committee shall interview those certified Applicants who indicate their willingness to develop and operate a facility at a candidate site located within such community; meet with the Board or the Deputy Commissioner of the Division of Capital Planning and Operation at the request of any of them to discuss any aspects of the certified Applicants' qualifications or responses to the request for proposals; and undertake negotiations with each Certified Applicant that is willing to develop and operate a facility at the candidate site located within such community, pursuant to which the Community Supervisory Committee shall select the operator of any facility to be developed at such site.

3.28: Written Responses to Questions and Requests

(1) Each Certified Applicant interviewed by the site community Community Supervisory Committee shall be given an opportunity to file, within 60 days of the selection of a superior site, a written response to any questions or requests directed to such Certified Applicant.

(2) Such written response may include:
   (a) A description of any necessary changes in the originally proposed development, operation, closure, post-closure observation and maintenance or institutional control plans to be implemented at the superior site.
   (b) Any covenants proposed, as the result of negotiations with representatives of communities or the Commonwealth, to be made by the Applicant concerning:
      1) Transportation routing.
      2) Access road construction.
      3) Limitations on the hours or number of daily deliveries of low-level radioactive waste to the facility.
      4) The number of facility employees to be hired from among site, neighboring and affected community residents.
      5) The amount of business to be contracted for with site, neighboring and affected community firms.
      6) Mitigation of facility impacts on site, neighboring or affected communities.
   (c) Such other information that will allow the community supervisory committee to determine whether the Applicant will be able to ensure proper facility operation in order to protect public health, safety and the environment, and the site and neighboring communities' interests.

3.29: Operator Selection

(1) Between 60 and 90 days after the selection of the superior site, the Community Supervisory Committee of the site community shall select, from among the certified applicants interviewed, the operator of the facility to be developed at such site. If the candidate site is situated in more than one community, the selection of the operator shall be made by majority vote of the members of the combined Community Supervisory Committees of the site communities.

(2) Except as provided in 845 CMR 3.29(3), if the Community Supervisory Committee or Community Supervisory Committees fail to select an operator from among the certified applicants within 90 days after the selection of the superior site, the Board shall select such operator by a vote of its members.

(3) Upon a showing by the Community Supervisory Committee that, despite its best efforts to select a facility operator within such 90 days, such selection could not be timely accomplished, the Board may agree to defer operator selection to allow the Community Supervisory Committee to complete its selection and to exercise the Board's power to select the operator chosen by the Community Supervisory Committee.

DEVELOPMENT CONTRACT

3.31: Execution of Development Contract

(1) Within 60 days of the selection of the operator, the Board shall execute a development contract under which the operator shall be obligated to fulfill all of the requirements of the facility approval process established in *M.G.L.* c.111H, §§29 to 34 inclusive in accordance with the plan submitted by the operator to the Community Supervisory Committee as part of the written response to questions and requests (or the original plan submitted in response to the Requests for Proposals), or any revision of such plan approved by the Board. The terms of the development contract and, in particular, any payments for services to be provided pursuant to such contract, shall be established through negotiations between the Applicant and the Board.

(2) The operator shall be required to post a bond, in an amount to be determined by the Board, payable to the Board. The amount of such bond shall be reviewable from time to time by the Board to ensure its adequacy. Such bond shall be conditioned on the faithful performance of the obligations, agreements and covenants specified in the development contract, and shall provide that, if the operator defaults on the development contract, it shall pay to the Board all damages sustained as a result of the default.

(3) The Board shall seek the assistance and advice of the Deputy Commissioner of Division of Capital Planning and Operation in overseeing the operator's activities under the development contract and evaluating the adequacy of such development activities.

(4) If no development contract is executed within 60 days of the designation of the operator or the required bond is not posted, the operator selection shall be set aside, and a replacement operator shall be selected in accordance with the procedures set forth in 845 CMR 3.29. The Community Supervisory Committee or Community Supervisory Committees shall have 30 days to select the replacement operator, from the expiration of the time for the operator originally selected to execute the development contract or post the performance bond.

COMPREHENSIVE OPERATING CONTRACT

3.41: Execution of Comprehensive Operating Contract

(1) Upon issuance of a facility license, the Board, after consultation with the Community Supervisory Committee of each site community, and the operator shall negotiate a comprehensive operating contract. Such contract shall, at a minimum:
   (a) Set forth, consistent with the management plan, the rights and responsibilities of each party with respect to the facility.
   (b) Specify that site, affected and neighboring communities are third party beneficiaries.
   (c) Specify the terms on which the superior site is to be leased to the operator.
   (d) Set forth design and performance specifications for the facility.
   (e) Establish the right of the Board to supervise all aspects of the development, operation, closure and post-closure observation and maintenance of the facility.
   (f) Set the conditions that must be satisfied prior to transfer of the facility license to the Board.
   (g) Provide that the Board may modify or terminate the contract if it determines that a change in the ownership or control, or in the directors or officers of the operator, or a change in any of its principal subcontractors may adversely affect the safe development, operation, closure or post-closure observation and maintenance of the facility.
   (h) Provide that the operator shall abide by all covenants proposed to be made to each site, neighboring and affected community in the operator's proposal or in any written statements subsequently submitted.
   (i) Provide that the Board shall abide by any additional covenants undertaken for the benefit of site, neighboring or affected communities which it deems necessary and appropriate.
   (j) Provide that the operator shall annually pay to each site community, during the period commencing with the issuance of a facility license and ending with the transfer of such license to the Board, a sum equal to the amount due to such community in real property taxes.
   (k) Provide that:
      1) The operator shall annually pay to the site community during the period of the facility's operation, a sum equal to four per cent of the annual gross operating receipts of the facility.
         a) Except during the first year of the facility's operation, if the facility accepts less than 100,000 cubic feet of waste in any calendar year, the sum to be paid to the site communities pursuant to this section shall not be less than $240,000.
         b) Except during the first year of the facility's operation, if the facility accepts 100,000 cubic feet or more, but less than 200,000 cubic feet of waste in any calendar year, the sum to be paid to the site communities pursuant to this section shall not be less than $320,000.
         c) Except during the first year of the facility's operation, if the facility accepts 200,000 cubic feet or more of waste in any calendar year, the sum to be paid to the site communities pursuant to this section shall not be less than $400,000.
         d) During the first calendar year of the facility's operation, the minimum sum to be paid to the site communities shall be prorated in accordance with a schedule set forth in the comprehensive operating contract.
      2) In addition to any other amounts to be paid, the operator shall pay $150,000 per year, pro rata, to the site community during the period commencing with

the opening of the facility and ending five years after the issuance of a facility license.

3) If a facility is located in more than one community, any community compensation to be provided for site communities pursuant to the comprehensive operating contract shall be divided among such communities in the proportion that each community's population residing within three miles of the outermost boundaries of the facility bears to the total population of site communities within such areas.

(l) Provide that:

1) The operator shall annually pay to neighboring communities during the period of the facility's operation, a sum equal to one per cent of the annual gross operating receipts of the facility.

a) Except during the first year of the facility's operation, if the facility accepts less than 100,000 cubic feet of waste in any calendar year, the sum to be paid to neighboring communities pursuant to this section shall not be less than $60,000.

b) Except during the first year of the facility's operation, if the facility accepts 100,000 cubic feet or more, but less than 200,000 cubic feet of waste in any calendar year, the sum to be paid to neighboring communities pursuant to this section shall not be less than $80,000.

c) Except during the first year of the facility's operation, if the facility accepts 200,000 cubic feet or more of waste in any calendar year, the sum to be paid to neighboring communities pursuant to this section shall not be less than $100,000.

d) During the first calendar year of the facility's operation, the minimum sum to be paid to neighboring communities shall be prorated in accordance with a schedule set forth in the comprehensive operating contract.

2) The community compensation to be provided for neighboring communities pursuant to the comprehensive operating contract shall be divided among such communities in the proportion that each community's population residing within three miles of the outermost boundaries of the facility bears to the total population of such communities within such area. If the facility has no neighboring communities, such community compensation shall be divided among the site communities in accordance with the formula established in this section.

(m) Provide that the operator shall collect a surcharge, established by the Board, for the Low-Level Radioactive Waste Trust Fund, and within 30 days remit the amounts collected, together with any interest accrued thereon, to the State Treasurer.

(2) The Board and the operator shall execute such contract upon the availability of funds necessary to ensure that the Board can satisfy the community compensation responsibilities thereunder.

EXEMPTIONS

3.91: Exemptions

(1) Pursuant to *M.G.L.* c.111H, §§30 and 48, the selection of an operator is not subject to the requirements of *M.G.L.* c.149, §§44A through 44J, inclusive.

(2) Pursuant to *M.G.L.* c.111H, §48, the selection of an operator is not subject to the requirements of M.G.L. c.7, §§38A1/2 through 38N, inclusive.